

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN GASS,	:	
Petitioner	:	CIVIL ACTION NO. 3:14-1738
v.	:	(MANNION, D.J.) (SCHWAB, M.J.)
RICHARD C. SMITH,	:	
Respondent	:	

MEMORANDUM

Before the court is petitioner John Gass' petition for writ of habeas corpus, as well as the report of Magistrate Judge Schwab which recommends that the petition be dismissed without prejudice. (Doc. [6](#)).

By way of relevant background, on September 8, 2014, John Gass, a prisoner proceeding *pro se*, filed a petition for writ of habeas corpus. (Doc. [1](#)). Petitioner subsequently moved for leave to proceed *in forma pauperis*, (Doc. [4](#)), and Judge Schwab granted the petitioner's application by order dated September 22, 2014. (Doc. [5](#)). Gass failed to file his petition on the standard form mandated by the Local Rules, and his petition did not include all information required by the standard form. Therefore, Judge Schwab directed the petitioner to refile his petition on the standard form, which was provided to him by the Clerk of Court on September 22, 2014. The petitioner was given

until October 22, 2014 to refile his petition. However, the petitioner failed to refile his petition on the standard form.

By report dated December 12, 2014, Judge Schwab reviewed Gass's petition to determine whether it plainly appears from the petition that he is not entitled to relief. (Doc. [6](#)). In her report, she recommended that the petition for writ of habeas corpus be dismissed without prejudice because Gass failed to establish that he exhausted state remedies, as required by [28 U.S.C. §2254\(b\)](#) and (c). No objections have been filed by either party to Judge Schwab's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the recommended basis for dismissal of the petition for writ of habeas corpus presented by Judge Schwab. Because the court agrees with the sound reasoning that led Judge Schwab to the conclusions in her report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 27, 2015

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